



May 3, 2002

Ms. Peggy D. Rudd
Director and Librarian
Texas State Library and Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2002-2311

Dear Ms. Rudd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161507.

The Texas State Library and Archives Commission ("TSLAC") received a request for copies of correspondence between former Governor George W. Bush and former Lieutenant Governor Bob Bullock. You claim that the requested information may be excepted from disclosure under sections 306.004, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you raise and reviewed the submitted information.

Pursuant to section 441.201 of the Government Code, Governor George W. Bush designated the George Bush Presidential Library as the repository for his gubernatorial records in December 2000.¹ Since the former Governor designated the George Bush Presidential Library as the repository for his records, disputes have arisen concerning the ownership of the records, the role of TSLAC in the designation process, and the applicability of the Public Information Act (the "Act") to the records. Consequently, the Governor's Office and TSLAC have requested an Attorney General's Opinion under section 402.042 of the Government Code to help resolve these disputes.

¹The George Bush Presidential Library is a part of the National Archives and Records Administration, a federal agency, and is not a "governmental body" for the purpose of the Public Information Act. *See* Gov't Code § 552.003. We will collectively refer to the George Bush Presidential Library and the National Archives and Records Administration as the NARA.

During the pendency of the opinions process, the NARA, TSLAC, a representative of President George W. Bush, and the Governor's Office entered into an Interim Memorandum of Understanding ("IMOU") under which the NARA agreed to continue to maintain former Governor Bush's records and forward to TSLAC any request for the records within 72 hours of the NARA's receipt of the request. The terms of the agreement specify that TSLAC was given legal title to former Governor Bush's records as well as the authority and responsibilities afforded it under Texas law. Specifically, TSLAC agreed to review any requested records for information that could be excepted from disclosure under the Act and request a decision from this office if and when the public availability of the information came into question. The IMOU may be terminated under its terms by any of the parties thereto upon the issuance of a formal Attorney General Opinion.

The NARA received the instant request for information after former Governor Bush designated it as the repository of his records, but before the NARA entered into the IMOU with TSLAC. Consequently, at the time the instant request for information was made, the NARA was merely a repository for the information at issue, and it was not an agent for TSLAC for the purpose of receiving requests for information. *See* Gov't Code § 441.201; Open Records Decision No. 617 at 2-3 (1993). Because the request at issue was not submitted to TSLAC by the requestor, we find that TSLAC is not required to respond to the request. *See* Gov't Code §§ 552.222, .301; *see also* Open Records Decision Nos. 576 at 4 (1990), 497 at 3 (1988), 44 at 2 (1974). Based on this finding, we need not reach the remainder of the issues you have raised.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

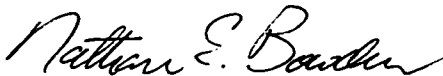
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 161507

Enc. Submitted documents

cc: Mr. Lucius Lomax
P.O. Box 547
Austin, Texas 78767
(w/o enclosures)